AFFIN BANK BHD v. SHARIFAH ZOHRA JABEEN SYED SHAH MISKIN

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
VARGHESE GEORGE JCA
MARY LIM J
[CIVIL APPEAL NO: W-02(IM)(NCVC)-905-06-2015]
30 DECEMBER 2015

CIVIL PROCEDURE: *Striking out – Claim for – Rules of Court 2012, O. 18 r. 19(1) – Guarantor defaulted in repayment of loan – Bank instituted bankruptcy proceedings against guarantor – Guarantor sued bank for losses purportedly suffered due to bankruptcy proceedings – Whether pleadings disclosed reasonable cause of action – Whether bankruptcy proceedings direct consequence in seeking to enforce judgment in default against guarantor – Whether bank allowed to bring enforcement proceedings on strength of valid judgment of court – Whether there was malice in presentation of bankruptcy petition – Whether guarantor's claim sustainable – Whether frivolous and abuse of court process*

LIMITATION: *Accrual cause of action – Malicious prosecution – Guarantor sued bank for losses purportedly suffered due to bankruptcy proceedings – Whether time barred – Whether six year period started from when bankruptcy notice issued and served – Whether time must run from earliest date when course of action complete – Limitation Act 1953, s. 6*

The appellant had granted hire purchase facilities to one Sheir Mohamad Sadar Ali ('Sheir') for the purchase of a car *vide* a hire purchase agreement. The respondent agreed to be the guarantor for Sheir's repayments to the appellant. Sheir, however, defaulted in repayments and a judgment in default against the respondent was entered on 16 January 2003. On 9 October 2003, the appellant filed a bankruptcy notice against the respondent, who did not take action. By letter dated 11 July 2005, the appellant informed the respondent that the car had been sold off at a public auction and sought for payment of the outstanding balance owed by Sheir, which the respondent failed to pay. The appellant then proceeded to obtain a receiving order ('RO') and adjudicating order ('RO') against the respondent. The respondent applied to strike out the RO and AO, which application was allowed on the ground that the respondent was a social guarantor. On 4 November 2014, the respondent and the company where she was director and shareholder sued the appellant for various losses purportedly suffered as a result of the bankruptcy proceedings. The appellant applied to strike out the claim under O. 18 r. 19(1) of the Rules of Court 2012 with the submission that the action was scandalous, frivolous and an abuse of the process of the court. The appellant further relied on the ground that the claim was time-barred under s. 6 of the Limitation Act 1953. In reply, the respondent submitted that its case against the appellant for having initiated the bankruptcy proceedings was

not based on malice alone; but also based on fraud, dishonesty and breach of fiduciary duty. The High Court judge agreed with the respondent that the pleadings did disclose a reasonable cause of action for malice, negligence, defamation, loss of business opportunities and profits. The High Court found that (i) the matters disclosed in the statement of claim necessitated a trial on the respondent's claim; and (ii) it was premature and unjust to shut out the respondent at this interlocutory stage. Dissatisfied with the said decision, the appellant appealed.

Held (allowing appeal)
Per Mary Lim J delivering the judgment of the court:

(1) At the heart of the respondent's problem was the judgment of the court entered on 16 January 2003. While that may be a judgment entered in default of appearance, it was nevertheless a valid and proper judgment of court until it was set aside. Neither the respondent nor any of the parties affected by that judgment had taken any discernible course of action to set aside that default judgment. That judgment stands to this day. The bankruptcy proceedings brought against the respondent was a direct consequence of the appellant's course of action in seeking to enforce that judgment. (paras 15 & 16)

(2) The appellant was seeking to realise that judgment and recover the outstanding balance still due under the hire purchase agreement and for which the respondent had stood as guarantor. These were good grounds in law which represent reasonable and probable cause for the presentation of the bankruptcy petition which the appellant genuinely believed it was entitled to pursue. It was both implicit and not in the public interest if litigants such as the appellant were prohibited from bringing honest enforcement proceedings and claims before the court on the strength of a proper and valid judgment of the court (paras 16 & 17)

(3) No malice or lack of good faith arose herein where the bankruptcy proceedings not only stemmed but flowed from that valid judgment of the court. Although in the nature of a default judgment which had lapsed as it had been more than 12 years since it was pronounced, the judgment was nevertheless valid and regular. Further, the respondent must plead the material facts or particulars which explained the presence of malice in such circumstances. A careful examination of the statement of claim showed that these specific requirements had not been met. All that was presented in the pleadings were bare and bland statements with respect to malice. (paras 19-21)

(4) Insofar as the plea of limitation goes, the six year period started from when the bankruptcy notice was issued and served on the respondent; the latest when the AO and RO were ordered. The cause of action could not be when these orders were set aside. Time must run from the earliest date when the course of action is complete. (para 22)

(5) The respondent's claim was clearly unsustainable and it would not be in the interest of justice or the parties for the case to proceed to a full blown trial. Since the cause of action concerned the presentation of the bankruptcy petition, these were matters of record and did not require *viva voce* evidence. The principles of law involved are trite reflecting the respondent's claim to be plainly frivolous, vexatious and an abuse of court process. Thus, the respondent's claim was struck out. (paras 24 & 25)

Bahasa Malaysia *Headnotes*

Perayu memberikan pinjaman sewa beli kepada seorang yang bernama Sheir Mohamad Sadar Ali ('Sheir') bagi pembelian sebuah kereta melalui satu perjanjian sewa beli. Responden bersetuju menjadi penjamin bagi bayaran balik oleh Shier kepada perayu. Walau bagaimanapun, Sheir gagal membayar balik dan penghakiman ingkar dimasukkan terhadap responden pada 16 Januari 2003. Pada 9 Oktober 2003, perayu memfailkan notis kebankrapan terhadap responden, yang tidak mengambil apa-apa tindakan. Melalui surat bertarikh 11 Julai 2005, perayu memaklumkan responden bahawa kereta tersebut telah dijual dalam satu lelongan awam dan perayu menuntut bayaran baki tunggakan yang terhutang oleh Sheir, yang gagal dibayar oleh responden. Perayu kemudiannya memperolehi perintah penerimaan ('RO') dan perintah penghakiman ('AO') terhadap responden. Responden memohon untuk membatalkan RO dan AO dan permohonannya dibenarkan atas alasan responden seorang penjamin sosial. Pada 4 November 2014, responden dan syarikat di mana responden adalah seorang pengarah dan pemegang saham, menyaman perayu untuk pelbagai kerugian yang dialaminya akibat prosiding kebankrapan terhadapnya. Perayu memohon untuk membatalkan tuntutan responden di bawah A. 18 k. 19(1) Kaedah-Kaedah Mahkamah 2012 dengan hujahan bahawa guaman tersebut remeh dan satu salah guna proses mahkamah. Perayu seterusnya bergantung pada alasan bahawa tuntutan terhalang oleh had masa di bawah s. 6 Akta Had Masa 1953. Dalam responnya, responden menghujahkan bahawa kesnya terhadap perayu yang telah memulakan prosiding kebankrapan terhadapnya bukan sahaja berasaskan niat jahat; tetapi juga berasaskan penipuan, ketidakjujuran dan pelanggaran kewajipan fidusiari. Hakim Mahkamah Tinggi bersetuju dengan responden bahawa pliding mendedahkan kausa tindakan munasabah untuk niat jahat, kecuaian, fitnah, kehilangan peluang perniagaan dan keuntungan. Mahkamah Tinggi memutuskan bahawa (i) perkara-perkara yang terkandung dalam penyata tuntutan memerlukan perbicaraan tentang tuntutan responden; (ii) adalah pramatang dan tidak adil untuk menghalang responden pada peringkat interlokutori ini. Tidak berpuas hati dengan keputusan tersebut, perayu merayu.

Diputuskan (membenarkan rayuan)
Oleh Mary Lim H menyampaikan penghakiman mahkamah:

(1) Asas kepada masalah responden adalah penghakiman mahkamah yang dimasukkan terhadapnya pada 16 Januari 2013. Walaupun penghakiman dimasukkan terhadap keingkaran kehadiran, ia adalah penghakiman mahkamah yang sah dan teratur. Responden dan lain-lain pihak yang terjejas dengan penghakiman tersebut tidak mengambil apa-apa tindakan untuk mengetepikan penghakiman ingkar. Penghakiman tersebut kekal hingga hari ini. Prosiding kebankrapan terhadap responden adalah akibat tuntutan perayu menguatkuasakan penghakiman itu.

(2) Perayu menuntut untuk merealisasikan penghakiman dan mendapatkan balik tunggakan baki yang masih terhutang di bawah perjanjian sewa beli di mana responden adalah penjamin. Ini adalah alasan-alasan yang kukuh di bawah undang-undang yang melambangkan sebab munasabah dan kebarangkalian penyampaian petisyen kebankrapan yang perayu secara ikhlas percaya bahawa ia berhak meneruskan. Menjadi mutlak dan bukan kepentingan awam jika litigan seperti perayu dihalang daripada menguatkuasakan prosiding dan tuntutan di mahkamah atas kekuatan penghakiman mahkamah yang teratur dan sah.

(3) Niat jahat atau ketiadaan niat baik tidak timbul di sini di mana prosiding kebankrapan tidak hanya dibendung tetapi juga timbul daripada penghakimah mahkamah yang sah. Walaupun penghakiman ingkar itu telah luput kerana sudah 12 tahun berlalu sejak dikeluarkan, penghakiman adalah sahih dan teratur. Selanjutnya, responden harus memplid fakta atau butir material yang menjelaskan kehadiran niat jahat dalam keadaan sebegitu. Pemeriksaan penyata tuntutan secara teliti menunjukkan bahawa keperluan khusus itu tidak dipenuhi. Apa yang dibentangkan dalam pliding adalah kenyataan kosong dan hambar berkenaan niat jahat.

(4) Berkenaan pli had masa, tempoh enam tahun bermula dari pengeluaran dan penyerahan notis kebankrapan terhadap responden; paling lambat adalah semasa AO dan RO diperintahkan. Kausa tindakan tidak menjadi apabila perintah-perintah ini diketepikan. Masa mula berjalan dari tarikh paling awal apabila penjalanan tindakan selesai.

(5) Tuntutan responden dengan jelas tidak boleh dikekalkan dan bukan demi kepentingan keadilan atau pihak-pihak yang terlibat untuk kes ini diteruskan ke perbicaraan penuh. Oleh kerana kausa tindakan berkenaan penyampaian petisyen kebankrapan, ini adalah perkara-perkara bahan rekod dan tidak memerlukan keterangan *viva voce*. Prinsip undang-undang yang terlibat mantap mencerminkan tuntutan responden remeh, menyusahkan dan satu salah guna proses mahkamah. Oleh itu, tuntutan responden dibatalkan.

Case(s) referred to:

Abdul Wahdi Zakaria v. Puspakom Sdn Bhd [2014] 4 CLJ 785 CA ***(refd)***
AmBank (M) Bhd v. Abdul Aziz Hassan & Ors [2010] 7 CLJ 663 CA ***(refd)***
Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***
Business Computers International Ltd v. Registrar of Companies and Others [1987] 3 WLR 1134 ***(refd)***
Credit Corp (M) Bhd v. Fong Tak Sin [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69 SC ***(refd)***
Dr Syed Azman Syed Ahmad Nawawi & Ors v. Dato' Seri Hj Ahmad Said [2015] 7 CLJ 180 CA ***(foll)***
Jaafar Mohd Khalid v. Hong Leong Bank Bhd [2013] 8 CLJ 869 CA ***(refd)***
Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2009] 1 CLJ 663 FC ***(refd)***
Keruntum Sdn Bhd v. The Director of Forests & Ors [2015] 5 CLJ 301 CA ***(refd)***
Loh Wai Lian v. SEA Housing Corp Sdn Bhd [1984] 2 CLJ 160; [1984] 1 CLJ (Rep) 223 FC ***(refd)***
Machinchang Skyways Sdn Bhd & Anor v. Lembaga Pembangunan Langkawi & Anor And Another Appeal [2015] 3 CLJ 775 CA ***(refd)***
Nik Che Kok v. Public Bank Bhd [2001] 2 CLJ 157 CA ***(refd)***
Rondel v. Worsley [1967] 3 All ER 993 ***(refd)***
Tetuan Mokhtar Ngah & Co v. Kubu Pengkalan Sdn Bhd [2014] 1 LNS 1614 CA ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, s. 5(3)
Limitation Act 1953, ss. 6(1), 29
Rules of Court 2012, O. 18 r. 19(1)

For the appellant - John Clark Sumugod (Chuah Chen Yean with him); M/s Sidek Teoh Wong & Dennis
For the respondent - Muniandy Vestanathan (Rosmawati Md Isa with him); M/s Shareen Thrivina, Andy & Co

[Editor's note: For the High Court case, please see Sharifah Zohra Jabeen Syed Shah Miskin & Anor v. Affin Bank Bhd [2015] 1 LNS 495 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Mary Lim J:

Introduction

[1] The respondent and one other had sued the appellant bank for losses purportedly suffered by the respondent as a result of bankruptcy proceedings initiated by the appellant against the respondent. The appellant applied to strike out the claim under O. 18 r. 19(1) of the Rules of Court 2012. The application was allowed in part only; the second plaintiff's action was struck out with costs. There was no appeal by the second plaintiff. Being dissatisfied, the appellant appealed.

[2] After hearing the parties, the appeal was unanimously allowed. The court found that there are merits in the appeal and consequently struck out the claim. These are our reasons.

Brief Facts

[3] The appellant was the defendant bank who had granted hire purchase facilities to one Sheir Mohamad bin Sadar Ali (Sheir) for the purchase of a car *vide* hire purchase agreement dated 25 February 2002. Through a guarantee agreement of the same date, the respondent who was the first plaintiff in the claim, and one Masfa binti Roslly, agreed to be guarantors for Sheir's repayments to the appellant. Sheir defaulted in repayments and judgments in default against him as well as the respondent and the other guarantor were entered on 16 January 2003. A copy of the judgment in default was served on the respondent.

[4] On 9 October 2003, the appellant filed bankruptcy notices against all three. A copy of the bankruptcy notice was served personally on the respondent on 1 September 2004. The respondent did not take any action. The car was repossessed by the appellant and later sold off at a public auction. By letter dated 11 July 2005, the appellant informed the respondent of the auction and sought for payment of the outstanding balance owed by Sheir. The respondent failed to pay. The appellant then proceeded to obtain a receiving order and an adjudicating order (RO and AO respectively) against the respondent on 21 July 2008.

[5] The respondent applied to strike out the RO and AO. The application was allowed on 27 May 2010 on the ground that the respondent was a social guarantor. The appellant appealed against that decision, but subsequently, withdrew that appeal at the Court of Appeal.

[6] On 4 November 2014, the respondent and the company where she is director and shareholder sued the appellant for various losses purportedly suffered as a result of the bankruptcy proceedings. The respondent claimed that as she is a social guarantor, the proceedings were not in accordance with the requirements of the Bankruptcy Act 1967. The respondent alleged that the bankruptcy proceedings were initiated by the appellant negligently, maliciously, dishonestly, fraudulently, and/or without having taken every effort to recover from Sheir first including making Sheir a bankrupt, before pursuing any bankruptcy proceedings against the respondent. At para. 14 of the statement of claim, the appellant's solicitors are also accused of acting maliciously, dishonestly, fraudulently, negligently when the solicitors acted according to the appellant's instructions which led to the respondent being adjudged a bankrupt.

[7] Both the respondent and the company claimed that as a result of the bankruptcy proceedings, they suffered loss of several business opportunities and contracts, both locally and abroad, to the extent that they could no longer carry on with their businesses. The respondent claimed she suffered

A embarrassment, loss of reputation as a business woman and politician as she also had to relinquish her post as Timbalan Ketua Wanita KIMMA Kebangsaan. The two plaintiffs claimed for *inter alia* special damages of RM1,727,555.76, loss of earnings, general damages, including damages for defamation, exemplary damages and aggravated damages.

B **Application to strike out**

[8] The appellant applied to strike out the claim under O. 18 r. 19(1) of the Rules of Court 2012. The appellant claimed that the action is scandalous, frivolous or vexatious; and/or that it is an abuse of the process of court. According to the appellant, the statement of claim is defective in that no C cause of action is identified. Read as a whole, the respondent appears to allege that the appellant initiated the bankruptcy proceedings with malice. However, given that those bankruptcy proceedings were premised on a valid enforceable judgment of the court, it is trite law that there cannot be any element of malice in those circumstances. The respondent has also failed to D condescend into material facts and specifics on the particulars of the allegations of malice, fraud, dishonesty, defamation and/or negligence, rendering the claim defective; inconsistent and inherently improbable.

[9] The appellant further relies on the ground that the claim is time-barred under s. 6 of the Limitation Act 1953. It is the appellant's submission that E since the respondent's cause of action concerns alleged tortious acts of the appellant in relation to the filing of the bankruptcy notice against the respondent, the limitation period under sub-s. 6(1) of the Limitation Act 1953 for such causes of actions founded in tort is six years from when the cause of action accrued. Since the bankruptcy notice issued on 9 October F 2003 was served on the respondent on 1 September 2004, the period of six years starts to run from that date and limitation would set in on 8 October 2010. The appellant is prepared to accept that time can be said to run from when damages were suffered; and that would be when the respondent was declared a bankrupt. That would put the date as 21 July 2008. In both G situations, the writ filed on 6 November 2014 was clearly time-barred as the last date for filing any action against the appellant is 20 July 2014. The appellant submits that the computation of limitation cannot be from the date when the AO and RO were revoked, that is, on 27 May 2010 as any cause of action that the respondent may have would be completed by the date of H damage, at the latest.

[10] In reply, the respondent first of all submits that its case against the appellant for having initiated the bankruptcy proceedings is not based on malice alone; but on negligence and omission under sub-s. 5(3) of the Bankruptcy Act 1967. It is also based on fraud, dishonesty, and breach of I fiduciary duty. It is the respondent's contention that because she is a social guarantor; sub-s. 5(3) of the Bankruptcy Act 1967 requires the appellant to

prove to the satisfaction of the court that it had exhausted all avenues to recover debts owed by Sheir before commencing any bankruptcy action against her.

[11] The respondent submits that all these issues "disclose some course of action or raise some question fit to be decided by the judge". The "mere fact that the case originating summons is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out" – see *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7.

[12] On the issue of limitation, the respondent *inter alia* submits that since fraud has been pleaded, time does not even begin to run under s. 29 of the Limitation Act 1953, until such fraud was discovered.

[13] The learned High Court Judge agreed with the respondent that the pleadings did disclose a reasonable cause of action for malice, negligence, defamation, loss of business opportunities and profits. Contrary to the appellant's contentions, the court found the statement of claim to contain pleas of particulars or material facts for these causes of action – see paras. 14 to 16 of the statement of claim. The court found that the AO and RO against the respondent were obtained on 21 July 2008 whereas similar orders were only entered against Sheir on 28 August 2009.

[14] The court found that the matters disclosed in the statement of claim necessitate a trial on the respondent's claim; that it was premature and unjust to shut out the respondent at this interlocutory stage. The learned judge opined that "no matter how weak the plaintiff's pleadings are eg, averments on loss of reputation and business, it is not for the court to decide on the merits of the first plaintiff's claim at this stage. In the interest of justice, there ought to be a full trial where witnesses are called and be cross-examined to enable the court to arrive at a just decision". The court did not find the claim to be "scandalous, frivolous or vexatious, or an abuse of the court process".

Our Decision

[15] At the heart of the respondent's problem is the judgment of the court entered on 16 January 2003. While that may be a judgment entered in default of appearance, it is nevertheless a valid and proper judgment of court until it is set aside. Neither the respondent nor any of the parties affected by that judgment has taken any discernible course of action to set aside that default judgment. That judgment stands to this day.

[16] It is equally apparent that the bankruptcy proceedings brought against the respondent is a direct consequence of the appellant's course of action in seeking to enforce that judgment. The appellant was seeking to realise that judgment and recover the outstanding balance still due under the hire purchase agreement and for which the respondent had stood as guarantor. At that material time, and even now, the default judgment has not been set

aside; neither has it been satisfied. The bankruptcy proceedings were clearly initiated for that purpose. These are good grounds in law which represent reasonable and probable cause for the presentation of the bankruptcy petition which the appellant genuinely believe it was entitled to pursue.

[17] The court agrees that it is both implicit and not in the public interest if litigants such as the appellant are prohibited from bringing honest enforcement proceedings and claims before the court on the strength of a proper and valid judgment of the court. There can be no malice in such conditions. The rationale for this approach is succinctly expressed by Lord Pearce in *Rondel v. Worsley* [1967] 3 All ER 993 at p. 1024 and we agree with it entirely:

> The legal process inevitably creates hardships and it is not always easy to see what is the right balance. In attempting to do so one must regard the interrelation of the various parts. It is a hardship that a man who has done no wrong should be subjected by a plaintiff to a baseless charge, in meeting which he will incur large expense. The charge may be reported largely in the newspapers and injure his reputation. ... But the basic hardship is inevitable and will always remain, namely, that any plaintiff can use the legal machine as a sounding board for untruthful allegations and cause harm, trouble and expense to an innocent defendant, and yet the law holds him (and the press who report the case) immune from paying damages for their untruth. Yet, to remove this immunity would create a great injury to justice. Without it, the honest litigant might not dare to bring an honest claim for fear that if he fails he might be sued for damages.

[18] This view was applied by Scott J in *Business Computers International Ltd v. Registrar of Companies and Others* [1987] 3 WLR 1134 at p. 1138:

> It is implicit in the decision that the commencement of bankruptcy proceedings or the presentation of a winding up petition cannot found an action in damages unless associated with malice.

[19] The only exception to this protection from litigation is if there was no reasonable cause or probability and the initiation of the litigation was actuated by malice or lack of good faith. We fail to see how malice or lack of good faith can even arise where, as is the case here, the bankruptcy proceedings not only stems but flows from that valid judgment of the court which has never been set aside. Although in the nature of a default judgment which has lapsed as it has been more than 12 years since it was pronounced, the judgment is nevertheless valid and regular. This was similarly the view of this court in *Jaafar Mohd Khalid v. Hong Leong Bank Bhd* [2013] 8 CLJ 869; [2013] 5 MLJ 800:

> [29] ...In an action for malicious prosecution, the claimant must show, among other things, that he was prosecuted by the defendant, that is to say, that the law was set in motion against him by the defendant on a criminal charge. ...The plaintiff in the present case was never prosecuted on a criminal charge. What was set on motion against him was a bankruptcy proceeding.

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> [34] However, even assuming we are to examine the plaintiff's claim on the footing that his cause of action is actually the tort of malicious civil proceedings (or, malicious proceedings in bankruptcy), still the plaintiff must show absence of reasonable and probable cause (see *Jacobs v. Vockrodt* [2007] EWHC 2403 (QB); and *Johnson v. Emerson and Sparrow*). In the instant case it clearly cannot be said that there is absence of reasonable and probable cause as the bankruptcy proceedings was commenced by the defendant bank based on the sessions court default judgment which the plaintiff has never thought it fit to have it set aside. As long as the plaintiff has not applied to set aside the default judgment, there is in existence a valid default judgment. Indeed, the plaintiff has never pleaded that he was never served with the sessions court summons. **And as long as there is a valid judgment on which the bankruptcy proceedings is based, the defendant bank has a valid basis for commencing the bankruptcy proceedings**. (emphasis added)

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[20] Furthermore, the respondent must plead the material facts or particulars which explain the presence of malice in such circumstances. We have carefully examine the statement of claim and we do not find these specific requirements met. See *Dr Syed Azman Syed Ahmad Nawawi & Ors v. Dato' Seri Hj Ahmad Said* [2015] 7 CLJ 180; [2015] 5 MLJ 141:

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> [38] Firstly therefore, it was an established principle of law that particulars of the fact and matters from which malice was to be inferred by the court had to be specifically pleaded 'so that the truth and correctness of the particulars relied upon can be checked and verified' by the trial judge. No inference or conclusion on 'malice' could ensue at all unless there was such a pleading.
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> [45] If one was to closely scrutinise the matters pleaded by the plaintiffs in the reply or even in the statement of claim in this case (as reproduced above), it was beyond any doubt that those averments there were bare and bland statements with respect to malice (niat jahat) on the part of the defendants with no particulars of the facts or detail of matters from which express malice could be inferred or attributed to the defendants. The plaintiffs had not condescended to providing any particulars as required by O. 78 r. 3(3) at all.

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[21] Applying the above principles to the present case, all that the court is presented in the pleadings are "bare and bland statements with respect to malice".

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[22] Insofar as the plea of limitation goes, we agree with the appellant that the six year period starts from when the bankruptcy notice was issued and served on the respondent; the latest when the AO and RO were ordered. The cause of action cannot be when these orders were set aside. Time must run from the earliest date when the course of action is complete. In *Nik Che Kok v. Public Bank Bhd* [2001] 2 CLJ 157; [2001] 2 MLJ 328:

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A It is our view that for the purpose of limitation, time began to run from the earliest time at which the creditor could have brought an action.

[23] See similar views in a long line of authorities in *Loh Wai Lian v. SEA Housing Corp Sdn Bhd* [1984] 2 CLJ 160; [1984] 1 CLJ (Rep) 223; [1984] 2 MLJ 280; *Credit Corp (M) Bhd v. Fong Tak Sin* [1991] 2 CLJ 871; [1991] 1 B CLJ (Rep) 69; [1991] 1 MLJ 409; *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors* [2009] 1 CLJ 663; *AmBank (M) Bhd v. Abdul Aziz Hassan & Ors* [2010] 7 CLJ 663; [2010] 3 MLJ 784; *Abdul Wahdi Zakaria v. Puspakom Sdn Bhd* [2014] 4 CLJ 785; [2014] 5 MLJ 419; *Machinchang Skyways Sdn Bhd & Anor v. Lembaga Pembangunan Langkawi & Anor And Another Appeal* [2015] 3 CLJ C 775; [2015] 2 MLJ 373; *Tetuan Mokhtar Ngah & Co v. Kubu Pengkalan Sdn Bhd* [2014] 1 LNS 1614; [2015] 3 MLJ 409; and *Keruntum Sdn Bhd v. The Director of Forests & Ors* [2015] 5 CLJ 301; [2015] 4 MLJ 382.

[24] Under such conditions, it is plain and obvious that the respondent's claim is clearly unsustainable and it would not be in the interest of justice D or the parties for the case to proceed to a full blown trial. Since the cause of action concerns the presentation of the bankruptcy petition, these are matters of record and do not require any *viva voce* evidence. The principles of law involved are trite reflecting the respondent's claim to be plainly frivolous, vexatious and an abuse of court process.

E **[25]** Consequently, the appeal is allowed. The respondent's claim is struck out. The court further orders costs of RM25,000 here and below. Deposit to be refunded to the appellant.

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